Bank Muamalat Malaysia Bhd v Menteri Sumber Manusia, Malaysia & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-449–11 OF 2016
TENGKU MAIMUN, VERNON ONG AND ZALEHA YUSOF JJCA
29 NOVEMBER 2018

Labour Law — Trade union — Dispute — Trade union representing clerical employees in bank complained that bank promoted several of its members into new category ('CRR') which prevented them from continuing as members of the union — Based on investigations done by Director-General of Industrial Relations ('DGIR') Human Resources Minister ruled that CRR were not employees in the managerial, executive, confidential or security capacities (who were represented by bank's in-house officers' union) — Whether Minister's decision impugnable — Whether Minister's failure to produce DGIR's investigation report in the judicial review proceedings fatal — Whether law did not require Minister to produce report — Whether Minister and DGIR filed comprehensive affidavits detailing investigations done in the matter

Pursuant to a collective agreement ('CA') the appellant accorded recognition to the National Union of Bank Employees ('NUBE') to represent its non-clerical, general clerical and special grade clerical staff. NUBE's membership was open to all employees of banks or financial institutions whose job content consisted of clerical functions but excluded those employed in the managerial, executive, confidential or security capacities ('the excluded capacities'). The appellant created a category of employees known as customer relationship representatives ('CRR') who came under the excluded capacities and were thus represented by the appellant's in-house officers' union. When some of the appellant's general clerical employees, who were members of the NUBE, were promoted to become CRR, the union referred the matter to the Director-General of Industrial Relations ('the DGIR') who carried out an in-depth investigation into the matter and submitted his report and findings to the Minister for Human Resources. Based on the DGIR's investigations, the Minister, pursuant to s 9(1D) of the Industrial Relations Act 1967 ('the IRA') ruled that the CRR were not staff employed in the excluded capacities. The appellant applied to the High Court to judicially review the Minister's decision. In dismissing the application, the High Court held, inter alia, that: (a) the Minister was not required to limit his decision only to those CRR who were formerly employees of the NUBE; (b) the Minister was not obliged to produce the DGIR's report for the purpose of the judicial review proceedings; (c) the promotion of the appellant's employees to CRR was contrary to the CA and the spirit of the IRA; and (d) the Minister and the DGIR had fully complied with the IRA and the

A appellant had not shown any illegality, irrationality or procedural impropriety in the Minister's decision. In the instant appeal against the High Court's decision, the appellant contended that: (i) the Minister had acted beyond his jurisdiction by exceeding the terms of NUBE's complaint, ie, that the decision should only have concerned those former members of NUBE who had become B CRR; that the Minister should not have made a blanket ruling affecting the entire CRR category; and (ii) the Minister should have produced the DGIR's investigation report in the judicial review proceedings to justify the reasons for his decision. The respondents replied that, inter alia: (1) the DGIR's investigations showed that the CRR in fact performed clerical functions and C not managerial, executive, confidential or security functions; (2) the Minister and the DGIR had filed separate affidavits in the proceedings detailing the investigation process and findings; (3) nothing in the IRA compelled disclosure of the DGIR's investigation report; and (4) the Minister's decision correctly and holistically dealt with the question of whether or not the CRR as a class of D workers fell within the excluded capacities.

Held, dismissing the appeal:

(1) The dispute in the instant case related in essence to the question of E whether CRRs were employed in the managerial, executive, confidential or security capacities. The fact that some current CRRs were not formerly members of NUBE was irrelevant as the question of whether they were employed in the excluded capacities continued to determine whether or not they could become members of NUBE. Section 9(1A) of the IRA did F not require a dispute to be confined to workmen who are or were previously members of the trade union that had made the reference to the DGIR. Section 9(1A) was couched such that any dispute as to 'whether any workman or workmen are employed in a managerial, executive, confidential or security capacity' might be referred to the DGIR. At any G rate, the job scope and functions of the CRRs were the same irrespective of whether or not they were formerly members of NUBE. This fact was consistent with the DGIR's finding that there was no discernible difference in the job scope and functions between promoted CRRs and other CRRs; in other words, all CRRs performed and undertook the H same tasks. Accordingly, the Minister had not asked himself the wrong question or committed an error of law or exceeded his jurisdiction under s 9(1D) of the IRA (see para 18).

(2) With regard to the issue of the non-production of the DGIR's report and the investigation report, the Minister had stated the relevant facts which I were placed before him when he came to his decision. The Minister and the DGIR filed separate affidavits setting out the particulars of the investigation process conducted following the receipt of NUBE's complaint letter. The DGIR organised at least two meetings attended by representatives of the appellant and NUBE. On 12 occasions, the

DGIR's officers attended at the appellant's various branch offices and interviewed the CRRs. Information was obtained on their job scope, roles and responsibilities. The results of the investigation were submitted to the Minister who after having considered the same rendered his decision. It was apparent that the Minister only made his decision after an examination of the relevant reports, negotiations between the parties, results of the DGIR's investigations, the law and other relevant matters (see paras 19–20).

(3) In all the circumstances and as there was no requirement under s 9 of the IRA obliging the Minister or the DGIR to disclose the investigation report, the non-production of the DGIR's report was not fatal (see para 21).

(4) The Minister's decision was not impugnable on the ground of procedural impropriety. The appellant's contention was that there was no evidence before the High Court. That contention was clearly without merit as demonstrated by the comprehensive affidavits filed by the Minister and the DGIR (see para 22).

[Bahasa Malaysia summary

Selaras dengan perjanjian kolektif ('PK'), perayu memberikan pengiktirafan kepada Kesatuan Kebangsaan Pekerja-Pekerja Bank ('KKPB') untuk mewakili kakitangan kerani gred bukan kerani, am dan khas. Keanggotaan KKPB terbuka kepada semua pekerja bank atau institusi kewangan yang mana pekerjaannya terdiri daripada fungsi perkeranian tetapi tidak termasuk orang yang bekerja dalam kapasiti pengurusan, eksekutif, sulit atau keselamatan ('kapasiti yang dikecualikan'). Perayu menyediakan kategori pekerja yang dikenali sebagai wakil perhubungan pelanggan ('WPP') yang berada di bawah Kapasiti yang Dikecualikan dan oleh itu diwakili oleh pegawai kesatuan dalaman perayu. Apabila beberapa orang kerani am perayu, yang merupakan ahli KKPB, dinaikkan pangkat menjadi WPP, kesatuan tersebut merujuk perkara itu kepada Ketua Pengarah Perhubungan Perindustrian ('KPPP') yang menjalankan siasatan tentang perkara itu dan mengemukakan laporan dan dapatannya kepada Menteri Sumber Manusia. Berdasarkan siasatan KPPP, Menteri, menurut s 9(1D) Akta Perhubungan Perindustrian 1967 ('APP') memutuskan bahawa WPP bukan staf yang diambil kerja dalam Kapasiti yang Dikecualikan. Perayu memohon kepada Mahkamah Tinggi untuk mengkaji semula keputusan Menteri. Dalam menolak permohonan itu, Mahkamah Tinggi berpendapat, antara lain, bahawa: (a) Menteri tidak dikehendaki mengehadkan keputusannya hanya kepada WPP yang pernah menjadi pekerja KKPB; (b) Menteri tidak diwajibkan untuk menghasilkan laporan KPPP untuk tujuan prosiding semakan kehakiman; (c) kenaikan pangkat pekerja-pekerja perayu kepada WPP bertentangan dengan PK tersebut dan hasrat APP tersebut; dan (d) Menteri dan KPPP telah mematuhi sepenuhnya APP tersebut dan perayu tidak menunjukkan apa-apa yang tidak sah, tidak

rasional atau ketidakpatuhan prosedur dalam keputusan Menteri. Dalam rayuan ini terhadap keputusan Mahkamah Tinggi, perayu berpendapat bahawa: (i) Menteri telah bertindak di luar bidang kuasanya dengan melampaui syarat aduan KKPB, iaitu, keputusan itu hanya perlu berkaitan bekas ahli-ahli KKPB yang telah menjadi WPP; bahawa Menteri tidak sepatutnya membuat keputusan am yang melibatkan keseluruhan kategori WPP; dan (ii) Menteri sepatutnya telah mengemukakan laporan siasatan KPPP dalam prosiding semakan kehakiman untuk mewajarkan alasan keputusannya. Responden-responden menjawab bahawa, antara lain: (1) siasatan KPPP menunjukkan bahawa WPP sebenarnya melaksanakan fungsi perkeranian dan bukan fungsi pengurusan, eksekutif, sulit atau keselamatan; (2) Menteri dan KPPP telah memfailkan afidavit berasingan dalam prosiding yang memperincikan proses siasatan dan dapatan; (3) tiada apa-apa dalam APP tersebut memaksa pendedahan laporan siasatan KPPP itu; dan (4) keputusan Menteri dengan betul dan secara holistik telah menguruskan persoalan sama ada WPP tersebut sebagai kelas pekerja yang terjatuh dalam kapasiti yang dikecualikan.

Diputuskan, menolak rayuan:

(1) Pertikaian dalam kes ini berkaitan pada asasnya persoalan sama ada WPP tersebut diambil bekerja dalam kapasiti pengurusan, eksekutif, sulit atau keselamatan. Fakta bahawa beberapa WPP yang sekarang ini bukan bekas ahli-ahli KKPB adalah tidak relevan kerana persoalan sama ada mereka diambil bekerja dalam kapasiti yang dikecualikan terus menentukan sama ada atau tidak mereka boleh menjadi ahli-ahli KKPB. Seksyen 9(1A) APP tersebut tidak menghendaki suatu pertikaian mengehadkan kepada pekerja-pekerja yang mana adalah atau sebelum ini adalah ahli-ahli kesatuan sekerja yang telah membuat rujukan kepada KPPP. Seksyen 9(1A) telah diselaraskan supaya mana-mana pertikaian tentang 'sama ada mana-mana pekerja atau pekerja yang bekerja dalam kapasiti pengurusan, eksekutif, sulit atau keselamatan' mungkin dirujuk kepada KPPP. Walau apa pun, skop kerja dan fungsi WPP adalah sama tanpa mengira sama ada mereka pernah menjadi ahli KKPB atau tidak. Fakta ini selaras dengan dapatan KPPP bahawa tidak terdapat perbezaan yang jelas dalam skop kerja dan fungsi antara WPP yang dinaikkan pangkat dan WPP yang lain; dalam erti kata lain, semua WPP melaksanakan dan menjalankan tugas yang sama. Oleh itu, Menteri tidak dengan sendiri bertanyakan persoalan yang salah atau melakukan kesalahan undang-undang atau melampaui bidang kuasanya di bawah s 9(1D) APP (lihat perenggan 18).

(2) Berkenaan dengan isu laporan KPPP dan laporan siasatan yang tidak dikemukakan, Menteri telah menyatakan fakta-fakta relevan yang telah dikemukakan di hadapannya semasa beliau membuat keputusannya. Menteri dan KPPP telah memfailkan afidavit berasingan yang

menetapkan butir-butir proses siasatan yang dijalankan berikutan penerimaan surat aduan KKPB. KPPP menganjurkan sekurang-kurangnya dua mesyuarat yang dihadiri oleh perwakilan perayu dan KKPB. Pada 12 kali kejadian tersebut, pegawai KPPP telah hadir di pelbagai peabat cawangan perayu dan menemuduga WPP. Maklumat telah diperoleh berhubung skop kerja, peranan dan tanggungjawab mereka. Hasil siasatan telah dikemukakan kepada Menteri yang mana setelah mempertimbangkan keputusan yang sama membuat keputusannya. Adalah jelas bahawa Menteri hanya membuat keputusannya selepas pemeriksaan laporan yang relevan, rundingan antara pihak-pihak, keputusan penyelidikan KPPP, undang-undang dan perkara-perkara lain yang relevan (lihat perenggan 19–20).

(3) Dalam semua keadaan dan oleh kerana tiada keperluan di bawah s 9 APP yang menghendaki Menteri atau KPPP mendedahkan laporan siasatan, laporan KPPP yan tidak dikemukakan itu tidak memudaratkan (lihat perenggan 21).

(4) Keputusan Menteri tidak boleh dibantah atas alasan ketidakpatuhan prosedur. Hujah perayu adalah bahawa tidak ada keterangan di hadapan Mahkamah Tinggi. Hujah itu jelas tanpa merit seperti yang ditunjukkan dalam afidavit-afidavit komprehensif yang telah difailkan oleh Menteri dan KPPP (lihat perenggan 22).]

Notes

For cases on dispute, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2098–2101.

Cases referred to

Ambank (M) Bhd v Menteri Sumber Manusia & Anor and another appeal [2014] 6 MLJ 377; [2014] 1 LNS 686, CA (refd)

Hasni Hassan & Ors v Menteri Sumber Manusia & Anor [2012] MLJU 1799; [2013] 6 CLJ 74, CA (refd)

Hong Leong Bank Bhd v Menteri Sumber Manusia, Malaysia & Ors [2016] MLJU 1890, CA (refd)

Kesatuan Pekerja-Pekerja Syarikat-Syarikat Pembuatan Keluaran Getah v YB Menteri Sumber Manusia dan satu lagi [2012] 9 MLJ 748, HC (refd)

Minister of Home Affairs v Persatuan Aliran Kesedaran Negara [1990] 1 MLJ 351; [1990] 1 CLJ Rep 186, SC (refd)

Radha Krishnan a/l Kandiah v Menteri Sumber Manusia Malaysia & Anor [2010] 4 MLJ 713, HC (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)

Legislation referred to

Industrial Relations Act 1967 ss 9, 9(1), (1A), (1B), (1C), (1D), (2), 33, 33(1), (2)
Islamic Financial Services Act 2013
Printing Presses and Publications Act 1984 s 6(1)(a)
Trade Unions Act 1959

Appeal from: Application for Judicial Review No 25–249–08 of 2015 (High Court, Kuala Lumpur)

Sivabalah Nadarajah (Reena Enbasegaram with him) (Shearn Delamore & Co) for the appellant.
Ruzimah Mohd Radzuan (Shahmin Amizah Abu Bakar with her) (Senior Federal Counsel, Attorney General's Chambers) for the first, second and third respondents.
Edmund Bon Tai Soon (Andrew Yong with him) (Amerbon) for the fourth respondent.

Vernon Ong JCA:

INTRODUCTION

[1] This appeal is against the decision of the High Court given on 2 November 2016 dismissing the appellant's application for judicial review of the Minister of Human Resources' decision dated 18 May 2015 which held that the employees of the appellant known as customer relationship representatives are not employed in a managerial, executive, confidential or security capacity.

SALIENT FACTS

[2] The appellant is a licensed bank under the Islamic Financial Services Act 2013 and a member of the Malayan Commercial Banks Association ('MCBA').

[3] The Minister of Human Resources, Malaysia ('Minister'), the Director General of Industrial Relations ('DGIR') and the Director General of Trade Unions ('DGTU') are the first, second and third respondents respectively. The fourth respondent (the National Union of Bank Employees ('NUBE')) is a trade union of bank employees registered under the Trade Unions Act 1959. Pursuant to a collective agreement dated 3 November 2015 between the MCBA and NUBE, NUBE was accorded recognition by the appellant to represent its employees in the non-clerical, general clerical and special grade clerical category.

[4] In 2009, the appellant created a category known as customer service

representatives ('CRR') within the executive grade 12, which is a junior officer grade.

[5] From 2009 until 20 August 2015, there were 2,265 employees of the appellant who consisted of eligible non-clerical, clerical and special grade clerks, teller, and customer service representatives (grades 17 and 18) who were selected to be promoted based on their performance for the position of CRR. There were about 23 successful applicants who rejected the promotion or did not want to attend the interview, and only 160 of the 2,265 employees concerned, were eventually promoted since 2009. As at the date of the appellant's application for leave to commence judicial review proceedings, there were 134 CRRs.

[6] The appellant's employees who are categorised as clerical, non-clerical and special grade are represented by NUBE. The appellant's employees who fall within the executive grades 12, 11 and 10 including the CRRs, are represented by the appellant's in-house officers' union Kesatuan Pegawai-pegawai Bank Muamalat Malaysia Berhad ('KEPAK').

[7] A dispute has arisen between the appellant and NUBE arising from the promotion of certain general clerical grade employees of the appellant, who were promoted and re-designated as CRRs. By a letter of complaint dated 18 December 2014, NUBE referred the dispute to the DGIR under s 9(1A) of the Industrial Relations Act 1967 ('the IRA 1967').

[8] The DGIR conducted enquiries and interviewed the CRRs under s 9(1B) of the IRA 1967 at the appellant's branches in Penang, Kelantan, Selangor, Kuala Lumpur and Johore. Subsequently, the DGIR notified the Minister of the dispute under s 9(1C) of the IRA 1967.

[9] On 25 May 2015, the DGIR wrote to the appellant and NUBE enclosing the Minister's decision pursuant to s 9(1D) of the IRA 1967 whereby it was decided that the CRRs employed by the appellant are not employed in the managerial, executive, confidential or security capacity, as follows:

> Customer Relationship Representative adalah pekerja-pekerja yang digaji bukan dalam kapasiti pengurusan, Eksekutif, sulit atau keselamatan.

THE DISPUTE

[10] The essence of the dispute which was referred to the DGIR was NUBE's complaint that the appellant's promotion and redesignation of its clerical staff, who were members of NUBE to the post of CRR, prevented them from continuing as members of NUBE.

A DECISION OF THE HIGH COURT

[11] In summary, the findings of the learned judge are as follows:

(a) the Minister was not required to limit his decision to the former B employees of NUBE;

(b) the Minister was not required to refer the complaint to the DGTU;

(c) the Minister was not required to produce the DGIR's report;

(d) the promotion of the appellant's employees was contrary to the collective C agreement between the appellant and NUBE and contrary to the spirit of the IRA 1967; and

(e) the Minister and the DGIR had taken all necessary steps as required by the IRA 1967 and the appellant had failed to show any illegality, D irrationality or procedural impropriety.

SUBMISION OF PARTIES

[12] Before us, learned counsel for the appellant advanced two principal E grounds. First, the Minister had acted beyond his jurisdiction in handing down his decision as his ruling exceeded the terms of NUBE's complaint. The Minister's decision under s 9(1A) of the IRA 1967 can only be in respect of the dispute raised by any of the parties, vis trade union of workmen or by an employer or by a trade union of employers. NUBE's only complaint was the F issue of the capacity and scope of the appellant's tellers, ie, NUBE's former members, who had accepted the promotion to the position of CRRs, resulting in them coming out of NUBE's scope of representation. The issue was not whether or not all the CRRs came within the scope of NUBE's representation. In purporting to make a blanket ruling for the entire CRR category instead of G confining itself to the issue raised in the trade dispute, the Minister had asked itself the wrong question and committed an error of law (*Ambank (M) Bhd v Menteri Sumber Manusia & Anor and another appeal* [2014] 6 MLJ 377; [2014] 1 LNS 686; *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748; *Minister of Home* H *Affairs v Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351; [1990] 1 CLJ Rep 186).

[13] Second, learned counsel argued that despite the Minister's decision being challenged in a judicial review application the Minister failed to produce I the DGIR report and investigation report upon which his decision was founded upon. The reviewing court must have before it all the material upon which the Minister's impugned decision had been premised upon. It is incumbent upon the Minister to justify the manner in which he came to his decision. In the absence of the same, the Minister's decision cannot be

sustained (*Hong Leong Bank Bhd v Menteri Sumber Manusia, Malaysia & Ors* [2016] MLJU 1890 (CA)). A

[14] In reply, learned senior federal counsel appearing for the minister, the DGIR and the DGTU argued firstly that the DGIR had conducted a thorough investigation pursuant to s 9(1B) of the IRA 1967. The DGIR found that the CRRs were in fact performing clerical functions; the CRRs did not '(vi) Tidak membuat penilaian prestasi; (vii) Tidak mengambil tindakan disiplin; (viii) Tidak mengakses maklumat sulit seperti minit mesyuarat Pengurusan Kewangan Syarikat dan maklumat peribadi pekerja'. Further, the Minister's discretion under s 9(1D) of the IRA 1967 is wide, but not unlimited and, is based on his objective consideration of the referred dispute in the light of the DGIR's report and finding of the DGIR. Secondly, *Hong Leong Bank* cited by the appellant is distinguishable as in that case the DGIR did not file any affidavit in reply whereas in this case, the DGIR filed an affidavit setting out the details of investigations he conducted and the findings. It was also argued that s 9(1D) of the IRA 1967 did not require the minister to consider the DGIR's report. B C D

[15] Learned counsel for NUBE advanced the following points in reply: E

(a) there is nothing in s 9(1A) of the IRA 1967 that requires the complaint made by NUBE to be limited to its former members and that the DGIR was correct to investigate and the Minister was correct to make his decision in respect of the CRRs, who were all excluded from being members of NUBE, as a class. The fact that some current CRRs were not formerly members of NUBE is irrelevant, since the question of whether or not they are employed in an executive, management, security or confidential capacity continues to determine whether or not they can become members of NUBE and be represented by NUBE. There is no error of law as the Minister's decision pursuant to s 9(1D) relates back to s 9(1A) of the IRA 1967; F G

(b) this case is distinguishable from *Hong Leong Bank* where the Court of Appeal held that the failure of the DGIR to file a separate affidavit meant that there was no material before the High Court to confirm that the DGIR had acted in a reasonable manner. In this case, however, both the Minister and the DGIR had filed separate affidavits and explained the investigations process. Further, the Minister only made his decision after an examination of the relevant reports, negotiations between the parties, results of the DGIR's investigations, the law and other relevant factors. The investigations carried out by the DGIR were also comprehensive, whereby interviews were conducted with the CRRs in the appellant's branches in five states and meetings were conducted with the appellant. The minister's failure to produce the investigation report was not fatal as H I

there was no requirement under the relevant provisions which compels the minister or the DGIR to disclose investigation reports (*Radha Krishnan a/l Kandiah v Menteri Sumber Manusia Malaysia & Anor* [2010] 4 MLJ 713; *Hasni Hassan & Ors v Menteri Sumber Manusia & Anor* [2012] MLJU 1799; [2013] 6 CLJ 74 (CA); *Kesatuan Pekerja-Pekerja Syarikat-Syarikat Pembuatan Keluaran Getah v YB Menteri Sumber Manusia dan satu lagi* [2012] 9 MLJ 748); and

(c) the appellant's argument that there was no relevant material before the High Court is without basis as the learned judge considered the affidavits filed by the minister and the DGIR detailing the complaint, the meetings between the parties, the investigations conducted and the DGIR's findings. The learned judge correctly found that the minister's decision pursuant to s 9(1D) of the IRA 1967 had been properly and lawfully made following the minister's consideration of the relevant issues relating to the dispute.

DECISION

[16] At the outset, it is pertinent to note that NUBE's membership is open to all employees of banks or financial institutions whose job contents consist of clerical functions, irrespective of their designation, but exclude those who are employed in a managerial, executive or confidential or security capacity ('excluded capacities'). The concept of excluded capacities is derived from s 9 of the IRA 1967 which deals primarily with the recognition of trade unions by employers for the purpose of collective bargaining. As such, s 9(1) of the IRA 1967 distinguishes between workmen employed in the excluded capacities and workmen employed in other capacities.

[17] A trade union, the majority of whose members are employed outside the excluded capacities may not seek recognition or serve an invitation to commence collective bargaining in respect of members employed in the excluded capacities. As a labour union, NUBE's functions are to negotiate wages and working conditions, to regulate relations between worker and employer, to take collective action to enforce the terms of collective bargaining, to raise new demands on behalf of its members and to help settle their grievances. In order to enable NUBE to perform its responsibilities, the size of its membership is important. The effectiveness of collective bargaining and effective dispute resolution between employers and employees is dependent upon the number of members of the union. In the light of the above mentioned it can be appreciated that NUBE lodged the complaint with the DGIR over the fact that CRRs falling under the excluded capacities would remain as or become ineligible to become NUBE's members thereby ultimately affecting their membership enrolment in the appellant as a whole.

[18] The appellant's first complaint relates to the contention that the minister had exceeded the scope of his authority in ruling that CRRs are not employed in the excluded capacities. Although there is specific reference to 'jawatan juruwang' in NUBE's letter of complaint to the DGIR, we are of the view that the dispute in essence relates to the question of whether CRRs are employed in the a managerial, executive or confidential or security capacities. The fact that some current CRRs were not formerly members of NUBE is irrelevant as the question of whether they are employed in the excluded capacities continues to determine whether or not they can become members of NUBE. We do not think that s 9(1A) of the IRA 1967 requires a dispute to be confined to workmen who are or were previously members of the trade union that has made the reference to the DGIR. We say this because s 9(1A) of the IRA 1967 is couched such that any dispute as to 'whether any workman or workmen are employed in a managerial, executive, confidential or security capacity' may be referred to the DGIR. At any rate, the job scope and functions of the CRRs are the same irrespective of whether or not the CRR was formerly a member of NUBE. This fact is consistent with the DGIR's finding that there is no discernible difference in the job scope and functions between promoted CRRs and other CRRs; in other words, all CRRs perform and undertake the same tasks. Accordingly, we do not think that the minister had asked himself the wrong question or committed an error of law or had exceeded his jurisdiction under s 9(1D) of the IRA 1967. The cases cited by learned counsel for the appellant are of no aid to the appellant's argument and may be distinguished on the facts. *Ambank (M) Bhd v Menteri Sumber Manusia & Anor and another appeal* relates to a claim by the association of bank officers under s 9(2) of the IRA 1967 for recognition of a class of workmen specifically identified as those in 'Executive Scale E'. *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* was an appeal against the decision of the High Court quashing an award of the Industrial Court which turned on two issues, namely, as to the effect of ouster clauses in Acts of Parliament and secondly, as to the proper construction to be given to sub-ss (1) and (2) of s 33 of the IRA 1967 of the IRA 1967. *Minister of Home Affairs v Persatuan Aliran Kesedaran Negara* relates to an application for an order of certiorari to quash the decision of the Minister of Home Affairs, Malaysia refusing Aliran's application for a permit under s 6(1)(a) of the Printing Presses and Publications Act 1984.

[19] The second complaint relates to the non-production of the DGIR's report and investigation report. Learned counsel for the appellant relied on *Hong Leong Bank* where the Court of Appeal held that the failure of the DGIR to file a separate affidavit meant that there was no material before the High Court to determine whether the DGIR had acted in a reasonable manner. Further, the minister therein made bare averments in his affidavits and failed to refer to the relevant materials he took into consideration in coming to his decision.

[20] In the instant case, however, the minister had stated the relevant facts which were placed before him when coming to his decision. The minister and the DGIR have filed separate affidavits setting out the particulars of the investigative process conducted following receipt of NUBE's complaint letter. There were at least two meetings organised by the DGIR which were attended by representatives of the appellant and NUBE. On 12 occasions between 4 March–3 April 2015, the DGIR's officers had attended the appellant's branch offices and interviewed the CRRs in Selangor, Kuala Lumpur, Johore, Kelantan and Penang. In the course of their investigations, the DGIR obtained information on the job scope of the CRRs, roles and responsibilities. The results of the investigation were submitted to the minister who after having considered the same rendered his decision. Accordingly, it is apparent that the minister only came about to his decision after an examination of the relevant reports, negotiations between the parties, results of the DGIR's investigations, the law and other relevant matters.

[21] In all the circumstances and as there is no requirement under s 9 of the IRA 1967 obliging the minister or the DGIR to disclose the investigation report we do not think that the non-production of the DGIR's report is fatal.

[22] Lastly, we observe that the minister's decision is not impugned on the ground of procedural impropriety; rather the point raised by the appellant was that there was no evidence before the High Court. For the reasons adumbrated above, we are of the view that the appellant's contention is clearly without merit as demonstrated by the comprehensive affidavits filed by the minister and the DGIR. Accordingly, the appeal was dismissed with costs.

Appeal dismissed with costs.

Reported by Ashok Kumar